

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

FILED

01/02/20
11:25 AM

January 2, 2020

Agenda ID # 18071
Quasi-Legislative

TO PARTIES OF RECORD IN RULEMAKING 14-07-002 AND APPLICATION 16-07-015:

This is the proposed decision of Commissioner Guzman Aceves. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's February 6, 2020 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/S/ JEANNE M. McKINNEYfor
Anne E. Simon
Chief Administrative Law Judge

AES:avs

Attachment

Decision **PROPOSED DECISION OF COMMISSIONER GUZMAN ACEVES**
(Mailed 1/2/2020)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Develop a
Successor to Existing Net Energy Metering
Tariffs Pursuant to Public Utilities Code
Section 2827.1, and to Address Other Issues
Related to Net Energy Metering.

Rulemaking 14-07-002

And Related Matter.

Application 16-07-015

**DECISION MODIFYING DECISION 18-09-044 AND ADOPTING
ADDITIONAL CONSUMER PROTECTION MEASURES
FOR NET ENERGY METERING CUSTOMERS**

TABLE OF CONTENTS

Title	Page
Decision Modifying Decision 18-09-044 and Adopting Additional Consumer Protection Measures for Net Energy Metering Customers	2
Summary	2
1. Background	2
2. Standard for review	6
2.1. Petition for Modification Does Not Allege New or Changed Facts	7
3. Consumer Protections for Permitting Solar Providers to Obtain Electronic Signatures on the Solar Information Packet	8
3.1. Authority for additional consumer protections	14
4. Proposed Modifications to D.18-09-044	18
5. Additional Consumer Protection Enhancements	20
5.1. Making More Use of NEM Interconnection Application Information	20
5.1.1. Property Assessed Clean Energy Licensee Interconnection Information	20
5.1.2. Additional Financing Interconnection Information	21
5.1.3. Interagency Process For Associating Solar Industry and Financial Information with Complaints	22
5.1.4. Enhanced Enforcement of Interconnection Data	24
5.2. Forthcoming Ruling Regarding Financial Restitution	25
6. Comments on Proposed Decision	26
7. Assignment of proceeding	26
Findings of Fact	26
Conclusions of Law	27
ORDER	28

**DECISION MODIFYING DECISION 18-09-044 AND ADOPTING
ADDITIONAL CONSUMER PROTECTION MEASURES
FOR NET ENERGY METERING CUSTOMERS**

Summary

This decision modifies Decision (D.) 18-09-044 with respect to the requirement that solar providers obtain a customer's handwritten signature on the solar information packet adopted in D.18-09-044. This decision adds consumer protection measures, as specified, to permit solar providers to obtain either a handwritten signature or an electronic signature on the solar information packet.

This decision also directs additional consumer protection enhancements, including collection of further information regarding solar net energy metering-interconnected systems; coordination among the electric investor owned utilities and affected government agencies to more effectively address complaints related to these systems; and proposal of a citation program for enforcement of measures adopted in D.18-09-044 and in this decision.

This proceeding remains open.

1. Background

On August 24, 2018, the California Public Utilities Commission (Commission or CPUC) issued a proposed decision that would, in part, adopt a process for developing a solar information packet (information packet), and direct the electric investor-owned utilities (IOUs)¹ to modify their net energy metering (NEM) interconnection portals to require that the signed signature pages of the information packet be uploaded with each interconnection application. In comments to the proposed decision, the California Low Income

¹ Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company.

Consumer Coalition (CLICC) recommended the Commission require handwritten, or “wet,” signatures on the signature page of the information packet, noting that unscrupulous vendors use tablets to mislead customers into signing documents other than those the customers intend to sign. In joint reply comments, the California Solar and Storage Association (CALSSA) and the Solar Energy Industries Association (SEIA) opposed this requirement, referring to the Electronic Signatures in Global and National Commerce (E-SIGN) Act. CALSSA and SEIA argued the E-SIGN Act “provides that electronic signatures and records satisfy any record or signature requirements.”² On October 5, 2018, the Commission issued Decision (D.) 18-09-044, which agreed with CLICC’s recommendation and identified no conflict with the E-SIGN Act, noting that the E-SIGN Act concerns interstate and foreign transactions and further requires customer consent in order to legitimize the exclusive use of electronic records or documents.

On November 5, 2018, SEIA filed an application for rehearing of D.18-09-044, asserting the “requirement of a wet signature on the information packet constitutes reversible error,” and recommending the Commission “issue an order on rehearing that eliminates the requirement of a wet signature on the signature page of the information packet.”³ With reference again to the E-SIGN Act as well as to the Uniform Electronic Transactions Act (UETA), which

² *Reply Comments of the California Solar & Storage Association and the Solar Energy Industries Association on the Proposed Decision Adopting Net Energy Metering Consumer Protection Measures Including Solar Information Packet*, filed September 18, 2018, at 4, referencing the Electronic Signatures in Global and National Commerce Act (ESIGN, Pub.L. 106–229, 114 Stat. 464, enacted June 30, 2000, 15 U.S.C. ch. 96. Accessible at: <https://www.govinfo.gov/content/pkg/PLAW-106publ229/pdf/PLAW-106publ229.pdf>).

³ *Application of the Solar Energy Industries Association for Rehearing of Decision 18-09-044*, filed November 5, 2018 (Rehearing application), at 2.

provides that “[i]f a law requires a signature, an electronic signature satisfies the law,”⁴ the rehearing application concludes: “Thus, the Commission errs in requiring a customer’s wet signature on the information packet.”⁵

On November 20, 2018, CALSSA and CLICC each filed a response to SEIA’s application for rehearing. CALSSA’s response recommends the Commission allow alternatives to wet signatures, asserting the wet signature requirement increases time and costs involved in a solar installation and, further, that requiring a wet signature “will do nothing to prevent a fraudulent marketer from seeking an electronic signature on a different document that is misrepresented to the customer.”⁶ CALSSA’s response asserts customers already sign interconnection applications electronically, and suggests the most efficient procedure would be to have customers sign (electronically) the information packet at the same time as they sign the interconnection application.

CLICC’s response asserts the UETA does not apply to the wet signature requirement for the solar information packet, because “[t]he required signature does not memorialize a transaction agreed upon by the solar customer and another party... Rather, the signature indicates that the customer has been presented with certain information regarding residential solar installations.”⁷ CLICC’s response further argues the UETA “does not apply to transactions subject to...[a] law that requires that specifically identifiable text or disclosures in

⁴ California Civil Code Section 1633.7(d).

⁵ Rehearing application, at 3.

⁶ *Response of California Solar & Storage Association to Application of the Solar Energy Industries Association for Rehearing of Decision 18-09-044*, filed November 20, 2018, at 2.

⁷ *Response of California Low-Income Consumer Coalition to Application of the Solar Energy Industries Association for Rehearing of Decision 18-09-044*, filed November 19, 2018, at 2.

a record or a portion of a record be separately signed, including initialed, from the record,” with reference to Civil Code Section 1633.(b)(4).

On August 19, 2019, the Commission issued D.19-08-039, which denies rehearing of D.18-09-044 on the basis that “a potential customer may not conduct, *i.e.*, convey, his or her signature by electronic means. It follows that, absent an agreed-upon electronic transaction, the UETA does not apply to this portion of the solar contracting process.”⁸

On September 18, 2019, SEIA filed a petition for writ of review of D.18-09-044 and D.19-08-039 with the California Court of Appeals (petition for writ of review), asking the court to address whether the Commission violated the UETA “by prohibiting an individual who seeks to obtain a solar system from acknowledging receipt of a solar information packet through an electronic signature.” SEIA’s petition for writ of review asserts the requirement for a wet signature “is contrary to the express provisions of the UETA, *including one expressly prohibiting the Commission from circumscribing the use of an electronic signature* (emphasis in original),”⁹ with reference to the following specific provision of the UETA:

No state agency, board, or commission may require, prohibit, or regulate the use of an electronic signature in a transaction in which the agency, board, or commission is not a party unless a law other than this title expressly authorizes the requirement, prohibition, or regulation.¹⁰

⁸ D.19-08-039 *Order Denying Rehearing of Decision (D.) 18-09-044*, issued August 19, 2019, at 2.

⁹ Solar Energy Industries Association, Petitioners, v. Public Utilities Commission of the State of California, Respondent. *Petition for Writ of Review; Memorandum of Points and Authorities [Appendix of Supporting Exhibits Filed Concurrently in a Separate Volume]*, filed September 18, 2019 with the Court of Appeal of the State of California First Appellate District, at 21.

¹⁰ Civil Code Section 1633.17.

The Commission requested, and was granted, abeyance from the court in order to consider a petition for modification of D.18-09-044, to be filed by SEIA.

On October 3, 2019, SEIA filed a petition for modification of D.18-09-044 (petition for modification). The petition for modification includes generally the same assertions as the petition for writ of review, as to why requiring a wet signature violates the UETA, but additionally includes assertions as to why electronic signatures provide more protections against fraud than wet signatures.

On October 18, 2019, the assigned commissioner issued a ruling inviting comments on (1) proposed consumer protections to be imposed in the event the Commission is to allow solar providers to obtain electronic signatures on the solar information packet; and (2) a proposed solar provider registration process and a potential citation program for enforcing registration.

On November 4, 2019, ABC Solar Incorporated (ABC Solar), CALSSA, Central California Legal Services (CCLS), CLICC, GRID Alternatives (GRID), Pacific Gas and Electric Company (PG&E), the Public Advocate's Office of the Public Utilities Commission (Public Advocates Office), Solar Consumer Advisor (SCA), Southern California Edison Company (SCE), The Utility Reform Network (TURN), and SEIA each filed a response to the October 18, 2019 ruling and/or to SEIA's petition for modification. CALSSA, CLICC, PG&E, San Diego Gas & Electric Company (SDG&E), SEIA and SCA each filed reply comments on or before November 14, 2019. We address parties' specific arguments to the extent they pertain materially to the determinations we reach in this decision.

2. Standard for review

Rule 16.4 of the Commission's Rules of Practice and Procedure (Rules) governs petitions for modification. Rule 16.4 derives its authority from Public Utilities Code Section 1708, which allows the Commission to rescind, alter, or

amend any decision made by it. We note that modifying an existing decision, however, is an extraordinary remedy that must be carefully applied to keep with the principles of res judicata since “Section 1708 represents a departure from the standard that settled expectations should be allowed to stand undisturbed.”¹¹

2.1. Petition for Modification Does Not Allege New or Changed Facts

Rule 16.4(b) states: “[a] petition for modification of a Commission decision must concisely state the justification for the requested relief...Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.” In addressing this requirement, SEIA’s petition states “CLICC advanced the use of wet signatures as a means of reducing contractor fraud, asserting that ‘[a]ny concerns about the cost or inconvenience of paper documents are far outweighed by the heightened protections against fraud offered by handwritten signatures.’ The Commission adopted the wet signature requirement on that basis.”¹² The petition goes on to argue that CLICC provided no evidence to substantiate its statements, and parties did not have an opportunity to “submit evidence that demonstrates the additional protections against fraud that are afforded by e-signatures obtained through digital signature platforms as well as the additional benefits obtained through the use of e-signatures that can advance the

¹¹ 1980 Cal. PUC LEXIS 785, 24; *see also* 2015 Cal. PUC LEXIS 278, 7.

¹² *Petition of the Solar Energy Industries Association for Modification of Decision 18-09-044*, filed October 3, 2019 (Petition for modification), at 3.

Commission's objective of ensuring that customers receive and review the information packet."¹³

The petition mischaracterizes D.18-09-044 with respect to our reason for requiring a wet signature. As clearly stated, D.18-09-044 requires wet signatures as a means to address the risk that unscrupulous vendors use tablets to mislead customers into signing documents other than those the customers intend to sign. The potential for fraudulent behavior persists even with our requirement for wet signatures, but we determined greater protections are afforded by providing customers an opportunity to review a hard copy of the information packet rather than being presented with text on a tablet. D.18-09-044's determination to require wet signatures was based on a policy preference, not on facts that may be subject to dispute. Therefore, the petition for modification fails to present relevant new or changed facts that justify modifying D.18-09-044 as SEIA requests. We nevertheless find it reasonable to consider whether to authorize use of electronic signatures and approve certain requirements that are designed to reduce the risks associated with fraudulent behavior and other related misconduct in the industry.

3. Consumer Protections for Permitting Solar Providers to Obtain Electronic Signatures on the Solar Information Packet

After further consideration of the parties' positions, we find it reasonable to allow use of electronic signatures, with certain requirements intended to prevent fraudulent and high-pressure sales tactics, as discussed here.

First, as SEIA's petition for modification suggests, we will require that solar providers provide every customer with a complete copy of the information

¹³ Petition for modification, at 4.

packet, regardless of the signing method, before a solar provider collects customer initials and a signature on the information packet. For door-to-door sales (for which we adopt the definition proposed by CLICC),¹⁴ the complete copy must be provided in paper format unless the customer expressly requests an electronic format. For electronic sales, the complete copy can be either electronic or in paper format, whichever form the customer prefers. It is critical for customers to have an opportunity to review and understand the document prior to entering into a solar transaction. At minimum, customers should be encouraged to review the information packet; this can be effected via an attestation by which customers acknowledge they received a copy of the information packet. We authorize the Commission's News and Outreach Office to modify the information packet to include a new page, wherein the customer or record or authorized individual will initial a line next to a statement that the customer was provided a copy of the complete information packet before the customer initialed and signed the information packet. This attestation must be conducted in the same format that the customer selects to sign the remainder of the information packet, either wet or electronic. We direct the electric IOUs to

¹⁴ *Comments of the California Low-Income Consumer Coalition on the Solar Energy Industries Association's Petition for Modification of Decision 18-09-044 and on Assigned Commissioner's Ruling Regarding Enhanced Consumer Protections via Potential Modifications to Customer Information Packet Signature Requirement, and Solar Provider Registration Process for Interconnecting Under Net Energy Metering*, filed November 4, 2019 (CLICC comments), at 6: "A 'door-to-door sale' is a sale, lease, or rental (collectively, a 'sale') of a solar energy system in which the solar provider or its representative interacts with the buyer in person at a place other than the place of business of the solar provider (e.g., at the buyer's residence or at facilities rented on a temporary or short-term basis, such as hotel or motel rooms). The term 'door-to-door sale' does not include sales conducted online, by email, or by telephone, and that do not involve any in-person contact between the buyer and the solar provider or its representative prior to the delivery and installation of the solar energy system, except for contact necessary for the solar provider or its representative to physically inspect the buyer's home to ensure that it is suitable for a solar energy system."

modify their interconnection portals to require interconnection applicants to include this attestation in the same electronic file as the initialed and signed information packet pages.

Second, we will require a customer attestation that the customer was provided the option to sign the information packet electronically or in handwriting. Our intent with this requirement is to make clear to customers that they have an opportunity to select a hard copy option, in their preferred language, which may serve a deterrent function against fraudulent use of electronic signatures. This attestation shall be included in the same page that we authorize the News and Outreach Office to include in the information packet, as described above with respect to attestation that the customer was provided a copy of the complete information packet, in their preferred language and format (*i.e.*, hard copy or electronic).

Additionally, as CLICC emphasizes,¹⁵ because door-to-door solicitation often presents a heightened risk of fraud or other unscrupulous behavior by vendors attempting to obtain electronic signatures, we find it reasonable that a wet signature must be offered as the default option for these sales, while still permitting electronic signatures if requested by the customer. As explained by CLICC, vulnerable individuals, including the elderly and limited English proficiency homeowners, solicited in person, have been pressured into providing electronic signatures, despite not having access to a computer, Internet service, or a pre-existing e-mail address through which to access the electronically-signed documents. The attestation that a customer was offered, in their preferred language, a wet signature option by default for these sales, and the option to

¹⁵ *Ibid.* See also *Opening Comments of the Greenlining Institute on Consumer Protection and Related Issues*, filed January 24, 2017, at 4.

instead sign electronically, shall be incorporated into the attestation described above regarding customer choice.

In cases where a customer chooses to sign the information packet electronically, the following two requirements will additionally apply:

- Customer attestation that the customer of record or authorized individual entering into a solar contract had an e-mail address that was created and is controlled by the customer prior to the sale, lease, or power purchase agreement, and that this email address was in active use at least one month before first contact with the solar provider or its sales representative(s). This requirement is intended to ensure customers who choose to sign the information packet electronically have a way to receive a copy of any document they sign, and to prevent solar providers or their sales representatives from creating or controlling falsified e-mail addresses for the sole purpose of obtaining a customer's agreement. This attestation shall be included in the same page that we authorize the News and Outreach Office to include in the information packet, as described above with respect to attestations that (1) the customer was provided a complete copy of the information packet and (2) the customer was provided the option to sign the information packet electronically or in handwriting in their preferred language. In cases where a customer does not have a preexisting e-mail address, we direct the electric IOUs to require that the interconnection applicant upload copies of the handwritten initialed and signed pages of the information packet to the interconnection portal.
- An audit trail (also commonly referred to as an audit log, signature certificate or certificate of completion) as a security measure for customers who choose to sign the information packet electronically. Specifically, solar providers will be required to upload an audit trail document exported from an electronic signature software program showing the following information:

- The date and time when a link to the information packet was e-mailed to the customer;
- For each instance in which the information packet was opened:
 - The date and time when the information packet was accessed; and
 - The Internet Protocol (IP) address that was used to access the information packet.
- The date and time when the customer signed the information packet electronically;
- The customer's preexisting email address, to which the solar provider must send a copy of the signed information packet; and
- The date and time when a copy of the initialed and signed document was emailed to the customer.

We direct the electric IOUs to modify their interconnection portals to require uploading of a separate document that contains the elements of the required audit trail document, as specified above, separately from the initialed and signed pages of the information packet. The electric IOUs may allow interconnection applicants to upload an addendum to the audit trail that captures any information that is missing if the electronic signature platform they utilize does not contain all of these elements. In cases where a customer chooses to sign the information packet in handwriting, the interconnection applicant must indicate so in the interconnection portal (*e.g.*, via a checkbox), in which case the interconnection applicant will not be required to upload this audit trail document.

We will afford the electric IOUs some time to modify their interconnection portals as directed in this decision. Pursuant to the September 27, 2019 letter from the Energy Division director to parties in this proceeding and in

Rulemaking (R.) 12-11-005,¹⁶ solar providers are permitted to upload either handwritten or electronically signed pages of the solar information packet, without conditions, until January 28, 2020. Because solar providers are unable to comply with this decision until the electric IOUs and News and Outreach Office make the necessary modifications, we will extend this permission until the electric IOUs complete modification of their interconnection portals as directed in this decision.

The above requirements will extend to the same subset of NEM customers as specified in D.18-09-044. We direct the electric IOUs to include these requirements in the scope of the semi-annual spot audits required in D.18-09-044; these requirements are in addition to those already specified in D.18-09-044. At a minimum, the electric IOUs shall review the following items:

- For each interconnection application, the electric IOUs shall confirm that the customer initialed the attestations that (1) the solar provider or its sales representative provided the customer with a complete copy of the information packet before the solar provider collected customer initials and a signature on the information packet; and (2) the customer was provided an option to sign the information packet electronically or in handwriting.
- For interconnection applications in which the customer attests to being approached in a door-to-door setting, the electric IOUs shall confirm that the customer initialed the attestation that the solar provider or its sales representative offered the customer in their preferred language a wet signature option by default, and provided the option to

¹⁶ Letter from Energy Division Director to parties in R.14-07-002 and R.12-11-005, subject: *120-Day Deadline Extension for Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company to Reconfigure their Interconnection Portals to Require Solar Providers to Upload Customer Wet Signatures on Solar Information Packet from September 30, 2019 to January 28, 2020*, dated September 27, 2019.

instead choose an electronic signature. The electric IOUs shall also confirm that the customer initialed the attestation that a complete copy of the information packet was provided in paper format unless the customer expressly requested an electronic format.

- For interconnection applications in which the customer chose to sign the information packet electronically, the electric IOUs shall confirm the customer initialed the attestation that they (the customer) had a preexisting email address for the requisite amount of time, and that the audit trail document (and addendum, if applicable) contains all of the items required by this decision.
- For interconnection applications in which the interconnection applicant indicated that the customer chose to sign the information packet in handwriting, the IOUs shall confirm whether the initialed and signed pages of the information packet that were uploaded to the interconnection portal are scanned images or digital copies of the information packet.

3.1. Authority for additional consumer protections

In addressing the requirements of the UETA, SEIA states: “In order to render the consumer solar information packet signature requirement compliant with the UETA, ... the Decision should be modified to provide consumers the option of using either a wet signature or an [electronic] signature for execution of the consumer solar information packet.”¹⁷ While we do not concede that SEIA’s argument is correct, pursuant to this decision, we have unequivocally authorized electronic signatures for the information packet. As a result, the provisions of this decision are consistent with the UETA.¹⁸

¹⁷ Petition for modification, at 7.

¹⁸ While we have found that the electronic signature option is consistent with the UETA, it is not necessary to discuss whether it is the UETA that controls this determination, where it is also

However, in response to the assigned commissioner's ruling, SEIA argues that: (1) the UETA bars the Commission from implementing the attestation and audit trail requirements, (2) the requirements are duplicative of other state agencies' consumer protection rules, and (3) Public Utilities Code Section 701 does not provide the Commission with the jurisdiction to so implement these requirements. We disagree.

First, pursuant to Public Utilities Code Section 2827 *et seq.*, the Commission is vested with the exclusive authority to implement the NEM program.¹⁹ SEIA provides no evidence that statutes that narrowly govern the use of electronic business methods override the Commission's authority to implement an entire statutory scheme.²⁰ SEIA's argument is little more than an attempt to use the UETA as a shield against our authority to develop the NEM program in a manner that protects the public and ensures reliability of the electric grid. Therefore, we reject this argument.

We also reject SEIA's and other parties' claims that because other state agencies, including the Contractors State License Board (CSLB) and the California Department of Business Oversight (DBO), adopt and enforce consumer protection rules, the Commission's attestation and audit trail requirements are duplicative, unlawful, and ineffectual.²¹ Again, these

consistent with our authority to implement the NEM program, as discussed in detail in this decision.

¹⁹ Cal. Const., art. XII, § 5 [the legislature has "plenary power...to confer additional authority and jurisdiction upon the commission...."].

²⁰ Pub. Util. Code, § 2827 *et seq.*

²¹ See, e.g., *Reply Comments of the Solar Energy Industries Association on Assigned Commissioner's Ruling Regarding Enhanced Consumer Protections*, filed November 14, 2019, at 7-10; *Pacific Gas and Electric Company's (U39E) Opening Comments on the Assigned Commissioner's Ruling Regarding Enhanced Consumer Protections via Potential Modifications to Customer Information Packet Signature*

arguments overlook the fact that the Commission is vested with *exclusive* authority to implement the NEM program. In other words, even if we were to assume that other agencies' rules relate to consumer protection issues, they do not, and cannot by virtue of statute, completely occupy the NEM field. Thus, we reject these arguments as an unsuccessful attempt to divest the Commission of jurisdiction to implement its own program.

We also reject SEIA's claim that we lack jurisdiction to implement the attestation and audit trail requirements under Public Utilities Code Section 701. Public Utilities Code Section 701 provides that the Commission may "supervise and regulate every public utility in the State and may do all things, *whether specifically designated in this part or in addition thereto*, which are necessary and convenient in the exercise of such power and jurisdiction."²² The authority of the Commission has been liberally construed.²³ Pursuant to Public Utilities Code Section 701, we have the authority to act even in cases where there is no express statutory authorization, so long as the additional power and jurisdiction that we exercise is cognate and germane to the regulation of public utilities.²⁴

We agree with SEIA that our broad authority is limited by both "express legislative direction" to the Commission and "restrictions upon [the Commission's] power found in other provisions of the [Public Utilities Act] or elsewhere in general law."²⁵ Here, the "express legislative direction" relied upon

Requirement, and Solar Provider Registration Process for Interconnecting Under Net Energy Metering, filed November 4, 2019, at 3-4; Cal. Bus. & Prof. Code §§ 7065-7077; §§ 7090-7124.4.

²² Pub. Util. Code, § 701, emphasis added.

²³ *Consumers Lobby Against Monopolies v. Public Utilities Com.* (1979) 25 Cal.3d 891, 905.

²⁴ *Id.* at 905-906.

²⁵ *Assembly v. Public Utilities Com.* (1995) 12 Cal.4th 87, 103.

by SEIA extends only to the permitted use of electronic signatures under the UETA, which, as indicated above, this decision is consistent with. However, SEIA is mistaken insofar as it argues that the UETA also restricts our authority to adopt the attestation and audit trail requirements for the solar information packet, where these measures are clearly “cognate and germane” to our exclusive authority over public utility matters, which includes but is not limited to the power to “protect the people of the state from the consequences of destructive competition and monopoly in the public service industries,” as well as excessive charges.²⁶ SEIA cannot deny that solar system vendors are seeking to provide products that fall within the realm of the “public service industry,” regulated by the Commission. Nor can SEIA ignore the NEM statutes’ clear focus on protecting the people of California from the consequences of misleading and abusive sales practices, the presence of which is clear in the solar industry.²⁷

Moreover, and perhaps more importantly, contrary to SEIA’s assertion, our authority to implement the attestation and audit trail requirements for the solar information packet does not hinge upon whether SEIA’s clients are “public

²⁶ *Sale v. Railroad Com.* (1940) 15 Cal.2d 612, 617. See also *Order Instituting Rulemaking to Implement Senate Bill No. 1488 Relating to Confidentiality of Information – Order Granting Limited Rehearing of Decision 06-12-030 and Denying Rehearing of Decision in All Other Respects* [D.09-03-046] (2009), at 19 (“We also underscore our duty and commitment to protecting the interests of ratepayers and ensuring that Californians are not subject to experiencing abuses similar to those visited upon the State during the 2000-01 Energy Crisis.”); *Order Instituting Rulemaking to Consider Refinements to and Further Development of the Commission’s Resource Adequacy Requirements Program – Decision of Phase 2 – Track 2 Issues: Adoption of a Preferred Policy for Resources Adequacy* [D.10-06-018] (2010), at 13 (“[W]e cannot neglect our other primary public duty: protection of ratepayers from excessive charges....”).

²⁷ See, e.g., CLICC comments, at 2-3; Assem. Com. on Utilities and Commerce, Analysis of AB 27 (2013-2014 Reg. Sess.) Apr. 15, 2013, at 5 (new residential rate design principles must include “protections for low-income customers...clarity, simplicity, avoidance of cross-subsidization, and transparency...”).

utilities” in this instance.²⁸ By enacting Public Utilities Code Section 2827 *et seq.*, the Legislature clearly brought NEM program participants, including public utilities *and* solar providers, within the purview of our regulatory authority over public utility matters, with an emphasis on consumer protection. As we noted earlier in this proceeding, in signing the NEM amendments into law, Governor Edmund G. Brown Jr. stated that the goal “is to give the Commission the ability to ‘address current electricity rate inequities, *protect low income energy users* and maintain robust incentives for renewable energy investments.’”²⁹ Upon review, we find that the attestation and audit trail requirements constitute a proper exercise of our authority to protect energy users in accordance with the Governor’s intent, and that these measures are “necessary and convenient” in the exercise of our jurisdiction over public utility matters, including the NEM program.

4. Proposed Modifications to D.18-09-044

We make the following specific revisions to D.18-09-044 (additions in underline, deletions in strikeout):

D.18-09-044, at 33:

Separately, CLICC recommends we require “wet,” *i.e.*, handwritten, signatures on the signature page of the information packet, noting that unscrupulous vendors use tablets to mislead customers into signing documents other than those the customers intend to sign.

²⁸ *Comments of the Solar Energy Industries Association on Assigned Commissioner’s Ruling Regarding Enhanced Consumer Protections*, filed November 4, 2019, at 4-6.

²⁹ *Order Instituting Rulemaking to Develop a Successor to Existing Net Energy Metering Tariffs Pursuant to Public Utilities Code Section 2827.1, and to Address Other Issues Related to Net Energy Metering* (7/17/14), at 4, quoting Letter to State Assembly Members regarding AB 327, from Governor Edmund G. Brown Jr., Oct. 7, 2013 (emphasis added).

In reply comments, CALSSA/SEIA suggest we should not adopt this requirement, with reference to the E-SIGN Act, stating the E-SIGN Act “provides that electronic signatures and records satisfy any record or signature requirements.” The E-SIGN Act, however, concerns interstate and foreign transactions, and further requires customer consent in order to legitimate the exclusive use of electronic records or documents. ~~We agree with CLICC’s suggestion and~~ see no conflict with the E-SIGN Act. We will require a wet signature or an electronic signature, based on the customer’s chosen signing method, for a customer’s attestation of having received and read the information packet. For door-to-door sales, customers must first be offered a wet signature and provided an electronic option if requested. Electronic signatures shall be on a digital version of the solar consumer information packet, emailed to the customer’s email account, that is capable of generating an audit trail.

Ordering Paragraph 3:

~~No later than 30 days after Commission staff post a copy of the final solar information packet on the Commission’s website,~~ Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company (together, the utilities) shall reconfigure their interconnection portals to require solar providers to upload signed, ~~in handwriting,~~ signature pages stating that customers have received both the Commission’s solar consumer information packet and the Contractors State License Board’s Solar Disclosures Document, prior to interconnecting a customer’s system. The required signatures can be in handwriting on a physical copy of the solar consumer information packet or by an electronic signature on a digital version of the solar consumer information packet, based on the customer’s chosen signing method. For door-to-door sales, customers must first be offered a wet signature and provided an electronic option if requested. Electronic signatures shall be on a digital version of the solar consumer information packet, emailed to the customer’s email account, that is capable of generating an audit trail.

5. Additional Consumer Protection Enhancements

We will not at this time adopt a solar provider registration process as outlined in the October 18, 2019 ruling. We continue to consider this option and the input received on it from parties, and the additional enhancements below may continue to inform our considerations. The enforcement process proposal directed here may prove especially relevant. The incremental requirements and processes adopted in this section are intended to develop a more coordinated regulatory structure around solar consumer protection issues and inform any future measures the Commission may adopt to address them. The requirements below will extend to the same subset of NEM customers as specified in D.18-09-044.

5.1. Making More Use of NEM Interconnection Application Information

5.1.1. Property Assessed Clean Energy Licensee Interconnection Information

As of January 1, 2019, all Property Assessed Clean Energy (PACE) third-party program administrators must be licensed with DBO. DBO updates information for PACE licensees regularly. For all PACE-financed solar projects, we direct the electric IOUs to collect at interconnection the DBO PACE licensee information for all PACE third-party program administrators involved in a solar transaction.

The interconnection portals currently ask the interconnection applicant whether the system owner is a different entity than the host customer for the solar photovoltaic (PV) system. If the answer is “no,” the portals ask the applicant if the solar PV project is financed by a PACE loan, and if so, what entity is the financier of the PACE loan. We direct the electric IOUs to add a new field to the interconnection portals for applicants who affirm that the solar PV

project is financed by a PACE loan. The new field shall ask applicants to enter the third-party PACE program administrator license number, if applicable. We direct the electric IOUs to consult with DBO, the Joint Solar Agency Task Force (Joint Task Force), and the Energy Division as they develop their approach to implementing the requirement from this decision to auto-populate a dropdown list of valid licenses to facilitate data entry by applicants. The electric IOUs shall also provide applicants an option to select an exemption if the PACE-financed solar system is directly financed by a local entity instead of a third-party PACE program administrator.

Currently there are five third-party PACE program administrators with licenses in California. The IOUs shall coordinate with DBO, the Joint Task Force, and the Energy Division to establish a process to update the license list at an appropriate frequency.

5.1.2. Additional Financing Interconnection Information

The electric IOUs' interconnection portals currently collect information regarding third-party ownership type (lease, power purchase agreement, or pre-paid lease) and PACE financing status and financier information for NEM interconnected solar projects. However, other types of financing besides PACE may often be used to finance a solar project, such as traditional loans, personal loans, home improvement loans, credit cards, etc. As ABC Solar suggests, customers using some type of financing may constitute a significant portion of potentially fraudulent transactions.³⁰ Further, SCA emphasizes the importance

³⁰ ABC Solar Responds to ALJ Request for Comments on Consumer Solar Protection Guide, served November 4, 2019, at 3.

of collecting correct information on the type of financing used.³¹ For all residential solar projects that are not third-party owned, we find it useful to collect the specific name of the financial institution involved in the transaction, where financing other than PACE lending is involved, for complaint monitoring and resolution purposes.

The interconnection portals currently ask the interconnection applicant whether the system owner is a different entity than the host customer for the solar PV system. If the answer is “no,” the portals ask the applicant if the solar PV project is financed by a PACE loan. We direct the electric IOUs to add a new field to their interconnection portals for applicants that affirm that the solar PV project is not financed by a PACE loan. The new field shall ask the applicant to enter the name of the financial institution associated with the financing of the solar project. For example, applicants could enter the name of a local credit union, a national bank or unsecured intermediary lenders such as Greensky or Mosaic.

5.1.3. Interagency Process For Associating Solar Industry and Financial Information with Complaints

The proposed CPUC solar registration process was intended to identify the sales agents (particularly in door-to-door transactions), contractors, and financial information of each NEM-related solar project quickly when complaints are received at the Commission. Currently, the contractor’s license number and Home Improvement Salesperson (HIS) ID numbers are also provided (within the interconnection portal and within the uploaded solar contract, respectively). However, no process currently exists to associate this information with specific

³¹ *Comments by Solar Consumer Advisor on 10/18/19 Ruling Re 2 Proposals for Enhanced Consumer Protections*, filed November 4, 2019, at 7-8.

targets of complaints received by the Commission, CSLB, and DBO (which oversees PACE). CALSSA notes the importance of addressing complaints, and requests the Commission to continue to pursue enforcement related to solar complaints through the Joint Task Force.³² We agree and find it useful and necessary to establish a means whereby, when a complaint or case is received at these government agencies, the license or registration number for the relevant contractors, sales agents, and PACE program administrators/solicitors/solicitor agents involved in the transaction can not only be identified, but can be associated with the specific target of that complaint.

This process would allow the Commission and other affected agencies to generate and track information about the specific industry actors associated with complaints, and to identify trends for coordinated enforcement activities to protect consumers. Our intent is to create a process whereby when the electric IOUs, Commission staff, CSLB, or DBO receive a solar customer complaint related to abusive marketing, contract issues, financing, fraud, unexpectedly high bills, or maintenance or technical issues, the licensure information for all agents involved in that transaction can be readily identified and associated with the complaint for speedy and appropriate resolution of the relevant issues within each agency's jurisdiction.

We direct the electric IOUs to coordinate with Commission staff and the Joint Task Force to implement a process to collect and transmit this information to the Commission and the CSLB and DBO (together, the government agencies),

³² *Comments of the California Solar & Storage Association on the Assigned Commissioner's Ruling Regarding Enhanced Consumer Protections*, filed November 4, 2019, at 11; and *Reply Comments of the California Solar & Storage Association on the Assigned Commissioner's Ruling Regarding Enhanced Consumer Protections*, filed November 14, 2019, at 9.

as applicable, in a systematic fashion so that this data can be directly associated with specific complaints received by the government agencies. The electric IOUs shall forward this information in an agreed-upon format to the government agencies upon request, or at a regular set interval if the Joint Task Force elects to establish such a process in coordination with the electric IOUs.

5.1.4. Enhanced Enforcement of Interconnection Data

In this proceeding, we have grappled with how to protect solar consumers who are participants in the NEM program, from solar providers and their agents who use unscrupulous tactics to evade detection and enforcement action by various regulatory agencies. Such actions have resulted in substantial transaction costs to some consumers, risk of property foreclosure from associated financing, and in some instances losses from abandoned solar units. To support the detection and prosecution of these actors in our coordinated enforcement activities with CSLB and DBO, the Commission has directed the electric IOUs to implement changes to their interconnection portals to improve the quality and accuracy of information collected on solar providers and their agents. Specifically, D.18-09-044 adopted detailed processes for improving the accuracy and usefulness of the CSLB licensee data provided at interconnection. In this decision, we adopt similar improvements for DBO's newly registered third-party PACE program administrator data.

Compliance with these interconnection data collection provisions is paramount to help facilitate our coordinated enforcement efforts to protect solar customers. For this reason, and in order to promote compliance, we direct the Consumer Protection and Enforcement Division to propose a citation program for the consumer protection requirements put in place by D.18-09-044 and those

adopted herein. The citation program may include, but shall not be limited to, fines regarding the following required data:

1. CSLB license number;
2. CSLB Home Improvement Salesperson registration number as listed in the uploaded installation contract, if applicable to the transaction;
3. DBO license information for all third-party PACE program administrators;
4. Information regarding financial institutions involved in the transaction as described herein;
5. Customer attestations for the solar information packet as described herein; and
6. Additional requirements adopted as necessary to implement the consumer protection standards adopted herein.

5.2. Forthcoming Ruling Regarding Financial Restitution

Finally, there continues to be a need to fund restitution for customers who have been defrauded when attempting to go solar. As CLICC notes, these situations are within the Commission's responsibility and authority to address: IOU ratepayers being defrauded or misled, and being saddled with solar systems that do not provide benefits, runs counter to our energy goals and our overall responsibility to ensure a reliable electric grid. The registration program previously proposed by the assigned commissioner in this proceeding would have established a process to prevent non-registered providers from interconnecting, and it would also have generated fees that could fund restitution to customers. SDG&E in its comments suggested the Commission use these fees to provide legal aid to customers. CALSSA and SEIA assert that industry's existing voluntary practices of complaint resolution are enough. We are not persuaded by this last point, particularly in the absence of any

substantive, collective industry commitment to ensuring that some of the most egregious cases can be resolved. More must be done.

For these reasons, we find there is a need to develop additional options for providing restitution. The assigned commissioner intends to release a ruling in this proceeding with a revised restitution fund. This forthcoming ruling will propose a specific revenue source derived from interconnection fees, and a specific dispute resolution process in consultation with the Joint Task Force.

6. Comments on Proposed Decision

The proposed decision in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____ by _____ and reply comments were filed on _____.

7. Assignment of proceeding

Martha Guzman Aceves is the assigned commissioner and Patrick Doherty and Valerie U. Kao are the assigned ALJs in this proceeding.

Findings of Fact

1. Customers are at risk of fraud or high-pressure sales tactics regardless of whether they sign the solar information packet in handwriting or electronically; however, the risk is reduced for handwritten signatures.
2. It is critical for customers to have an opportunity to review and understand the solar information packet before they enter into a transaction for a solar energy system.
3. The UETA applies to transactions in which a customer elects to transact or execute agreements electronically.

4. It is critical for customers to have a means for receiving a copy of any document they sign.
5. It is critical to prevent solar providers from creating or controlling falsified e-mail addresses for the sole purpose of obtaining a customer's agreement.
6. It is critical to ensure the details of electronically signed documents are recorded and retained for auditing purposes.
7. It is useful to collect the specific name of the financial institution involved in a solar transaction, if something other than a Property Assessed Clean Energy licensee is involved, for complaint monitoring and resolution purposes.
8. It is useful and necessary to establish a means whereby, when a complaint or case is received, the license numbers for the relevant contractors, sales agents, and/ or Property Assessed Clean Energy providers (where applicable) can not only be identified, but associated with that complaint.
9. It is critical that the consumer protection rules be enforced.
10. Defrauded solar customers are entitled to relief.

Conclusions of Law

1. The Commission is vested with exclusive authority to implement the NEM program.
2. It is reasonable to allow use of electronic signatures, with certain requirements intended to prevent fraudulent and high-pressure sales tactics.
3. The attestation and audit trail requirements in this decision are necessary and convenient in the exercise of our jurisdiction over public utility matters.
4. D.19-08-044 should be modified as detailed in Section 4 of this decision.
5. The electric IOUs should be required to modify their interconnection portals to implement the consumer protection measures adopted in this decision.

6. The electric IOUs should be required to include the requirements of this decision in the scope of the semi-annual spot audits required by D.19-08-044.

7. It is reasonable to extend the allowance of electronic signatures on the solar information packet, without satisfying the aforementioned requirements, from January 28, 2020 until after the electric IOUs complete modifications of their interconnection portals as directed in this decision.

O R D E R

IT IS ORDERED that:

1. Decision 18-09-044 is modified as follows:

at 33:

Separately, CLICC recommends we require “wet,” *i.e.*, handwritten, signatures on the signature page of the information packet, noting that unscrupulous vendors use tablets to mislead customers into signing documents other than those the customers intend to sign.

In reply comments, CALSSA/SEIA suggest we should not adopt this requirement, with reference to the E-SIGN Act, stating the E-SIGN Act “provides that electronic signatures and records satisfy any record or signature requirements.” The E-SIGN Act, however, concerns interstate and foreign transactions, and further requires customer consent in order to legitimate the exclusive use of electronic records or documents. We ~~agree with CLICC’s suggestion and~~ see no conflict with the E-SIGN Act. We will require a wet signature or an electronic signature, based on the customer’s chosen signing method, for a customer’s attestation of having received and read the information packet. For door-to-door sales, customers must first be offered a wet signature and provided an electronic option if requested. Electronic signatures shall be on a digital version of the solar consumer information packet, emailed to the customer’s email account, that is capable of generating an audit trail.

Ordering Paragraph 3:

~~No later than 30 days after Commission staff post a copy of the final solar information packet on the Commission's website,~~ Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company (together, the utilities) shall reconfigure their interconnection portals to require solar providers to upload signed, ~~in handwriting,~~ signature pages stating that customers have received both the Commission's solar consumer information packet and the Contractors State License Board's Solar Disclosures Document, prior to interconnecting a customer's system. The required signatures can be in handwriting on a physical copy of the solar consumer information packet or by an electronic signature on a digital version of the solar consumer information packet, based on the customer's chosen signing method. For door-to-door sales, customers must first be offered a wet signature and provided an electronic option if requested. Electronic signatures shall be on a digital version of the solar consumer information packet, emailed to the customer's email account, that is capable of generating an audit trail.

2. The Commission's News and Outreach Office is authorized to modify the solar information packet to include a new page that includes the following attestations, each of which must be initialed by the customer of record or authorized individual:

- (a) Attestation by the customer that the solar provider or its sales representative(s) provided the customer with a complete copy of the solar information packet before the solar provider or its sales representative(s) collected customer initials and a signature on the solar information packet.
- (b) Attestation by the customer that the customer was provided an option to sign the information packet electronically or in handwriting.
- (c) In door-to-door solicitation situations, an attestation by the customer that the solar provider or its sales representative offered the customer a wet signature option by default, and

was provided the option to sign the information packet electronically; and an attestation that a complete copy of the information packet was provided in paper format unless the customer expressly requested an electronic format.

- (d) In situations where a customer chooses to sign the solar information packet electronically, attestation by the customer that the customer had an e-mail address that was created and is controlled by the customer prior to the sale, lease, or power purchase agreement, and that this email address was in active use at least one month before first contact with the solar provider or its sales representative(s).
3. (a) Within 120 days after the issue date of this decision, Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company (together, the utilities) shall modify their interconnection portals to require the signed attestation page to be included with the initialed and signed pages of the solar information packet, to be uploaded to the interconnection portal, for every interconnection application for which a signed solar consumer information packet is required.
- (b) If a solar provider executes a contract with a residential customer for solar on or after the date that a utility completes modification of its interconnection portal in accordance with this order, the solar provider is required to include the signed attestation page in the same portable document file as the customer-initialed and signed pages of the solar information packet.
- (c) The director of Energy Division, or his/her/their designee, is authorized to adjust this schedule if necessary to ensure efficient and cost-effective implementation.
4. (a) Within 120 days after the issue date of this decision, Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company (together, the utilities) shall modify their interconnection portals to enable uploading of an audit trail document, and to require uploading of an audit trail document for every interconnection application for which a signed solar consumer

information packet is required, unless the interconnection applicant indicates that the customer chose to sign the information packet in handwriting. The utilities shall modify their interconnection portals to enable interconnection applicants to indicate that the customer chose to sign the information packet in handwriting.

(b) If a solar provider executes a contract with a residential customer for solar on or after 120 days after the issue date of this decision, and if the customer chose to sign the solar information packet electronically, the solar provider is required to upload an audit trail document (and addendum, if applicable) containing all items identified in Section 3 of this decision.

(c) The director of Energy Division, or his/her/their designee, is authorized to adjust this schedule if necessary to ensure efficient and cost-effective implementation.

5. This decision extends the allowance of electronic signatures on the solar information packet, without satisfying the aforementioned requirements, from January 28, 2020 until Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company complete modification of their interconnection portals pursuant to Ordering Paragraphs 3 and 4.

6. Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company shall include the requirements of this decision, as detailed in Section 3, in the scope of the semi-annual audits required by Decision 18-09-044.

7. Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company (together, the utilities) shall each require at interconnection, for Property Assessed Clean Energy (PACE)-financed projects, that applicants submit valid third-party PACE program administrator licenses, if applicable. The utilities shall work with the Department of Business Oversight (DBO), the Joint Solar Agency Task Force, and the Energy Division to

auto-populate a dropdown list of valid licenses to facilitate data entry by applicants, and coordinate with DBO, the Joint Solar Agency Task Force, and the Energy Division to establish a process to update the license list at an appropriate frequency.

8. Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company shall each add a new field into their interconnection portals; this new field shall ask applicants to enter the name of the financial institution associated with the financing of a residential solar project, if applicable to that interconnection application, and as outlined in this decision.

9. Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company (together, the utilities) shall coordinate with Commission staff and the Joint Solar Agency Task Force to implement a process to collect and transmit interconnection information to the Commission, the Contractors State License Board and Department of Business Oversight (together, the government agencies), as applicable, in a systematic fashion so that this data can be directly associated with specific complaints received by the government agencies. The utilities shall forward this information in an agreed-upon format to the government agencies upon request, or at a regular set interval if the Joint Solar Agency Task Force elects to establish such a process in coordination with the utilities.

10. The Consumer Protection and Enforcement Division is authorized to propose a citation program for the consumer protection requirements established by Decision 18-09-044 and this decision.

11. Rulemaking 14-07-002 and Application 16-07-015 (consolidated) remains open.

This order is effective today.

Dated _____, at Bakersfield, California.